IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

MFA.No. 989 of 2001(D)

OP(MV).2071/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD.
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APPELLANT/ PETITIONER

C.SREEDHARAN, S/O. CHITHAMBERS MUDALLIAR,
AGED 41 YEARS, KUNNATHUPALAYAM,
THEKKEGRAMAM POST, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.K.R.RAGHUNATH
SRI.K.P.BALAGOPAL

RESPONDENTS: RESPONDENTS
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1. **M.VASUDEVAN, S/O. MADHAVAN,**
AGED 32 YEARS, KAYARAMPARAKALATHIL,
KARIYANCODE VILLAGE,
THIRUVILLAMALA, THRISSUR DISTRICT.

2. **M.VASUDEVAN, S/O. MADHAVAN, AGED NOT KNOWN,**
15/722, KUNNATHUVEEDU, PALAKKAD.

3. **THE MANAGER, NEW INDIA INSURANCE CO. LTD.,**
ANUGRAHA BUILDINGS, KUNNAMKULAM 680 502.

BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.No.989 OF 2001

Dated 4th December, 2007

JUDGMENT

Koshy,J.

Appellant/claimant met with an accident while riding a lorry as another lorry bearing registration No.KER 2428 came from the opposite direction in a rash and negligent manner dashed against the lorry driven by the appellant. Appellant claimed Rs.1,30,500/=, but, Tribunal has awarded only Rs.17,000/= after finding that first respondent driver of the lorry KER 2428 is responsible for the accident and it was owned by the second respondent and insrued by the third respondent insurance company. The only dispute is regarding the quantum of compensation.

2. Admittedly, appellant was the driver of the lorry. A heavy vehicle driver would have got more than Rs.100/= per day. According to the appellant, he was getting Rs.2,000 – 3,500 per month. The accident occurred on 14.5.1995. If Rs.100/= is taken as the daily income for a heavy vehicle driver, he would have got 25 days' work in a month and therefore, the monthly income will be Rs.2,500/=. Tribunal has taken Rs.1,250/= as the monthly income (Rs.15,000/= per year) whih is the monthly income fixed under the second schedule for a non-earning

person. Appelant was aged 36 and he was maintaining a family. He would have got at least Rs.2,500/= per month being a lorry driver. As a result of the accident, apart from the lacerated injuries as shown in the wound certificate, he sustained fracture of tibia and fibula and it is also stated that there was some malunion. An Orthopaedic surgeon issued a certificate saying that there is 6% disability. Tribunal reduced the same to 2% without any valid resons. He has fracture of tibia and fibula and there was some malunion which may create problems for the claimant in driving the vehicle. We are of the view that Tribunal ought to have taken at least 4% disability. If that be so, compensation payable will be Rs.19,200/= (Rs.2,500 x 12 x $\frac{4}{100}$ x 16). Tribunal has awarded only Rs.4,800/= for disability. So, the appellant is entitled to an additional amount of Rs.14,400/= on this count. The Tribunal after considering the medical certificate also found that the appellant was unable to do any work for four months and during the period of treatment granted Rs.3,750/= for actual loss of earning. Since we have doubled the income, he is entitled to another Rs.3,750/= for actual loss of earning. Compensation granted by the Tribunal under other heads are just and reasonable even though it was argued that it is inadequate. Therefore, appellant is entitled to an additional compensation of Rs.18,150/=. The above amount should be deposited by the third respondent insruance company, over and

above the decreed amount by the Tribunal, with 7.5% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

The appeal is allowed in part.

J.B.KOSHY
JUDGE

K.T.SANKARAN
JUDGE

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